

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No.	CAA-05- 2001 0 18
)		
Mastercraft Industries, Inc.)	Proceeding to Assess a	
Rice Lake, Wisconsin)	Civil Penalty under	
)	Section 113(d) of the	
)	Clean Air Act,	
Respondent.)	42 U.S.C. § 7413(d)	
)		
_____)		

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Mastercraft Industries, Inc. (Mastercraft), a corporation doing business in the State of Wisconsin.

Statutory and Regulatory Background

4. The National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 C.F.R. Part 63, Subpart A, were established pursuant to Section 112 of the Act and contain standards regulating specific categories of sources who have the potential to emit hazardous air pollutants (HAPs) listed in 40 C.F.R. Part 63.

5. On December 7, 1995, in accordance with Section 112 (d) of the Act, U.S. EPA promulgated the NESHAP for Wood Furniture

Manufacturing Operations (Wood Furniture NESHAP). These standards were codified at 40 C.F.R. Part 63, Subpart JJ, specifically 40 C.F.R. §§ 63.800 - 63.819. 60 Fed. Reg. 62936.

6. The Wood Furniture NESHAP applies to each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant that is a major source of HAPs as defined at 40 C.F.R. § 63.2. See 40 C.F.R. § 63.800.

7. "Wood furniture manufacturing operation" is defined as the finishing, gluing, cleaning and washoff operations associated with the production of wood furniture or wood furniture components. 40 C.F.R. § 63.801.

8. A "major source" is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. §7412(a)(3) and 40 C.F.R. § 63.2.

9. The compliance date for existing affected sources that emit less than 50 tons per year of HAPs in 1996 is December 7, 1998. 40 C.F.R. §63.800 (e).

10. 40 C.F.R. Subpart A ("General Provisions") applies to owners or operators who are subject to subsequent subparts of 40 C.F.R. Subpart A, except when otherwise specified in a particular Subpart or in a relevant standard. 40 C.F.R. § 63.1(a)(4).

11. Recordkeeping and reporting requirements of 40 C.F.R. § 63.10 apply to owners or operators of affected sources who are

subject to the provisions of 40 C.F.R. Subpart JJ. 40 C.F.R. § 63.10(a).

12. 40 C.F.R. § 63.10(d)(1) requires owners or operators of an affected source subject to reporting requirements to submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

13. 40 C.F.R. § 63.802(a)(2)(ii) requires that each owner or operator of an existing affected source subject to 40 C.F.R. Subpart JJ limit the VHAP content of contact adhesives (including foam adhesives used in products that do not meet the standards in 40 C.F.R. § 63.802(a)(2)(i), but excluding aerosol adhesives and excluding contact adhesives applied to nonporous substrates) at its facility to 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied.

14. "Aerosol adhesive" means an adhesive that is dispensed from a pressurized container as a suspension of fine solid or liquid particles in gas. 40 C.F.R. § 63.801.

15. "Conventional air spray" means a spray coating method in which the coating is atomized by mixing it with compressed air and applied at an air pressure greater than 10 pounds per square inch (gauge) at the point of atomization. 40 C.F.R. § 63.801.

16. 40 C.F.R. § 63.803(a) requires each owner or operator of an affected source to prepare and maintain a written work practice implementation plan that defines environmentally desirable work practices for each wood furniture manufacturing operation and addresses each of the work practice standards required under 40 C.F.R. § 63.803(b) through (l). The plan must

be developed no more than 60 days after the compliance date.

17. 40 C.F.R. § 63.803(b) requires each owner or operator of an affected source to train all new and existing personnel, including contract personnel, who are involved in finishing, gluing, cleaning and washoff operations, use of manufacturing equipment, or implementation of the requirements of this subpart. All personnel are to be given refresher training annually. The affected source is required to maintain a copy of the training program with the work implementation plan.

18. 40 C.F.R. § 63.803(c) requires each owner or operator of an affected source to prepare and maintain with the work practice implementation plan a written leak inspection and maintenance plan.

19. 40 C.F.R. § 63.803(d) requires each owner or operator of an affected source to develop and maintain a cleaning and washoff solvent accounting system.

20. 40 C.F.R. § 63.807(b) requires the owner or operator of an affected source to submit the compliance status report required by 40 C.F.R. § 63.9(h) no later than 60 days after the compliance date.

21. 40 C.F.R. § 63.807(c) requires the owner or operator of an affected source that is demonstrating compliance in accordance with 40 C.F.R. § 63.804(g) (1)-(3), (5), (7), and (8) to submit a report concerning the previous 6 months of wood manufacturing operations.

22. 40 C.F.R. § 63.807(c) (1) requires the first report be submitted 30 calendar days after the end of first 6 month period

following the compliance date.

23. 40 C.F.R. § 63.807(c)(2) requires subsequent reports to be submitted 30 calendar days after the end of each 6-month period following the first report.

24. 40 C.F.R. § 63.807(c)(3) specifies the information that must be included in each semiannual report.

25. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

26. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

27. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

28. Paragraphs 1-27 are incorporated herein by reference.

29. Mastercraft is a Wisconsin corporation located at 120 West Allen Street, Rice Lake, Wisconsin.

30. Mastercraft is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602 (e).

31. Mastercraft owns and operates the wood furniture manufacturing facility located at 120 West Allen Street, Rice Lake, Wisconsin (facility).

32. The Mastercraft facility is a major source of HAPs that emits less than 50 tons per year of HAPs.

33. The facility was constructed before 1994.

34. The facility is an existing affected source subject to the National Emission Standards for Wood Furniture Manufacturing Operations, 40 C.F.R. Part 63, Subpart JJ, §§ 63.800-63.819.

35. The compliance date for the facility is December 7, 1998.

36. On June 14, 2000, U.S. EPA sent Mastercraft an information request pursuant to Section 114 of the Clean Air Act, 42 U.S.C. § 7114.

37. On July 19, August 14, November 29, December 8, 2000, and January 22, February 5, 2001, Mastercraft submitted information in response to the Section 114 letter.

38. Prior to July 19, 2000, Mastercraft used a solvent based contact adhesive, product # SC-1107, and applied it onto porous substrates at its adhesive application processes (F01 and F02).

39. Contact adhesive, product # SC-1107, was applied to porous substrates with a conventional air spray gun at the Mastercraft facility until July 19, 2000.

40. Prior to July 19, 2000, Mastercraft failed to limit the

VHAP content of contact adhesive, product # SC-1107, at its facility to 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, as required by 40 C.F.R § 63.802(a)(2)(ii).

41. On and after July 19, 2000, Mastercraft replaced contact adhesive, product # SC-1107, with a new compliant contact adhesive, # SX-4244-K, which did not exceed the 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, limit.

42. Prior to July, 2001, Mastercraft's work practice implementation plan does not include work practice standards, as required by 40 C.F.R. § 63.803(b) through (d).

43. Prior to June, 2001, Mastercraft did not submit a compliance status report, as required by 40 C.F.R. § 63.807(b).

44. Prior to December 8, 2000, Mastercraft did not submit its first continuous compliance status report for reporting period December 1, 1998 through June 1, 1999, as required by 40 C.F.R. § 63.807(c)(1).

45. Prior to December 8, 2000, Mastercraft did not submit its subsequent continuous compliance status reports for reporting periods June 1 through December 1, 1999; December 1, 1999 through June 1, 2000 and June 1, 2000 through December 1, 2000, as required by 40 C.F.R. § 63.807(c)(2).

46. On May 24, 2001, U.S. EPA issued a Finding of Violation (FOV) to Mastercraft for violations of the Wood Furniture NESHAP.

47. On June 13, 2001, U.S. EPA held a conference with Mastercraft regarding the May 24, 2000 FOV.

Count I

48. Paragraphs 1-47 are incorporated herein by reference.

49. Mastercraft's failure to limit the VHAP content of contact adhesive, product # SC-1107, at its facility to 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, is a violation of 40 C.F.R. § 63.802(a)(2)(ii).

50. Mastercraft's violation of 40 C.F.R. § 63.802(a)(2)(ii) constitutes violation of the NESHAP and subjects Mastercraft to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count II

51. Paragraphs 1-50 are incorporated herein by reference.

52. Mastercraft's failure to maintain a work practice implementation plan that included the maintenance of work practice standards, as required by 40 C.F.R. § 63.803(b) through (d), constitutes a violation of 40 C.F.R. § 63.803(a) through (d).

53. Mastercraft's violation of 40 C.F.R. § 63.803(a) through (d) constitutes a violation of the NESHAP and subjects Mastercraft to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count III

54. Paragraphs 1-53 are incorporated herein by reference.

55. Mastercrafts' failure to submit a compliance status report required by 40 C.F.R. § 63.9(h) no later than 60 days after the compliance date is a violation of 40 C.F.R. § 63.807(b).

56. Mastercraft's violation of 40 C.F.R. § 63.807(b) constitutes a violation of the NESHAP and subjects Mastercraft to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count IV

57. Paragraphs 1-56 are incorporated herein by reference.

58. Mastercraft's failure to submit continuous compliance status reports for the reporting periods December 1, 1998 through June 1, 1999; June 1 through December 1, 1999; December 1, 1999 through June 1, 2000 and June 1, 2000 through December 1, 2000 is a violation of 40 C.F.R. § 63.807(c).

59. Mastercraft's violation of 40 C.F.R. § 63.807(c) constitutes a violation of the NESHAP and subjects Mastercraft to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Proposed Civil Penalty

60. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

61. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$128,700. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

62. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

63. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

64. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

65. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Nidhi K. O'Meara, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mrs. O'Meara at (312) 886-0568. Mrs. O'Meara's address is:

Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

66. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed herein.

Answer

67. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in herein, above, and must serve copies of the written answer on the other parties.

68. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

69. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

70. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

71. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed herein.

72. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

73. Whether or not Respondent requests a hearing,


Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Nidhi O'Meara at the address or phone number specified in herein, above.

74. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

75. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

August 24, 01
Date



Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-05- 2001 0 18

In the Matter of Mastercraft Industries, Inc.
Docket No. .

~~CAA-05~~ 2001 018

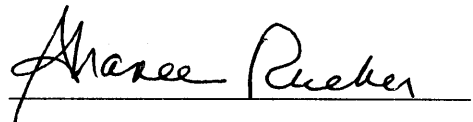
CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number [CAA-05-01-] to the Regional Hearing clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

James V. Hodshire, Registered Agent
Mastercraft Industries, Inc.
120 West Allen Street
Rice Lake, Wisconsin 54868

Steven J. Ziesmann, Esq.
Godfrey & Kahn, S.C.
780 North Water Street
Milwaukee, Wisconsin 53202 - 3590

on the 27th day of August, 2001.


Shanee Rucker, Secretary
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9580 9809